

JUN 19 2006

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

**POLO TOWERS MASTER OWNERS
ASSOCIATION, INC.,**

Plaintiff - Appellant,

v.

**FACTORY MUTUAL INSURANCE
COMPANY,**

Defendant - Appellee.

No. 04-16623

D.C. No. CV-03-01065-JCM

MEMORANDUM*

**Appeal from the United States District Court
for the District of Nevada
James C. Mahan, District Judge, Presiding**

**Argued and Submitted June 14, 2006
San Francisco, California**

Before: SCHROEDER, Chief Judge, GRABER, Circuit Judge, and DUFFY, District Judge.

**Plaintiff Polo Towers Master Owners Association, Inc., appeals from a
summary judgment granted in favor of Defendant Factory Mutual Insurance**

*** This disposition is not appropriate for publication and may not be
cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.**

***** The Honorable Kevin Thomas Duffy, Senior Judge, United States
District Court for the Southern District of New York, sitting by designation.**

Company. On de novo review, Padfield v. AIG Life Ins. Co., 290 F.3d 1121, 1124 (9th Cir. 2002), we hold that Plaintiff's loss is excluded from coverage under the "contamination" provision of the insurance policy. That provision is not ambiguous, see United Nat'l Ins. Co. v. Frontier Ins. Co., 99 P.3d 1153, 1157 (Nev. 2004) (holding that the courts may not rewrite unambiguous insurance contract provisions), and it includes the high level of *legionella* bacteria in the water. The loss did not result directly from "covered" physical damage because the "faulty workmanship" exclusion applies.

AFFIRMED.